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2 BEFORE THE PERSONNEL APPEALS BOARD

3 STATE OF WASHINGTON

4  
5 TANISHA ANDERSON,

6 Appellant,

7 v.

8 UNIVERSITY OF WASHINGTON,

9 Respondent.  
10

) Case No. SUSP-04-0023

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

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12 I. INTRODUCTION

13 1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE  
14 NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Pat  
15 Steele Building, Conference Room 2097, Seattle, Washington, on March 4, 2005.

16 1.2 **Appearances.** Appellant Tanisha Anderson was present and was represented by Gregory  
17 Rhodes, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Jeffery W. Davis,  
18 Assistant Attorney General, represented Respondent University of Washington.  
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20 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of two-day suspension for  
21 neglect of duty and excessive absenteeism.  
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24 II. FINDINGS OF FACT

25 2.1 Appellant Tanisha Anderson is a permanent employee for Respondent University of  
26 Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules

1 promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the  
2 Personnel Appeals Board on April 21, 2004.

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4 2.2 Appellant began her employment with Harborview Medical Center as an hourly Dietary  
5 Unit Clerk (Meal Host) in September 1998. As a Meal Host, Appellant's primary duties consist of  
6 preparing patient food trays for three daily meals. Appellant works four, ten-hour days, and she  
7 spends approximately 75 percent of her workday assembling and serving meals to patients. Her  
8 remaining time is typically spent keying in the meal requests into a computer. During her initial  
9 employment orientation, Appellant was trained on the procedures for reporting absences. This  
10 procedures requires an employee to report an unplanned absence no later than 30 minutes prior to  
11 the start of his/her scheduled shift. In April 1999, Appellant was hired as a permanent classified  
12 employee and she was provided with a departmental handbook detailing the attendance guidelines.  
13 Appellant was aware that the standard for absences is generally not to exceed an average of 8 hours  
14 per month. When Appellant is present at work, the quality of performance is rated as good and she  
15 has received positive feedback from patients.

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17 2.3 Appellant has not been the subject prior formal discipline, however, her personnel history  
18 includes the following:

- 19
- 20 • A July 23, 1999, letter of counsel for failure to follow procedures for reporting an  
absence and failure to report to work.
  - 21 • A July 16, 2000, verbal counseling for excessive absenteeism.
  - 22 • A February 22, 2001, letter of counsel for excessive absenteeism.
  - 23 • A September 6, 2002, verbal counsel for excessive absenteeism.
  - 24 • An October 10, 2002, verbal counsel for excessive absenteeism.
  - 25 • A March 3, 2003, letter of reprimand for excessive absenteeism.
- 26

1 2.4 There is no dispute that between March 22, 2003 and February 5, 2004, Appellant was  
2 absent 15 work days for a total of 150 hours during this 12-month period. Appellant claims that all  
3 her absences after November 3, 2003, were the result of an auto accident which resulted in her  
4 missing work due to physical therapy appointments. However, the documents Appellant provided  
5 showing the dates she attended physical therapy do not coincide with the dates she called in absent  
6 after November 3. In addition, Appellant's testimony supports that two of her absences in  
7 November were for reasons other than physical therapy appointments.

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9 2.5 Diane Wearne is the Manager of Patient Food Services at Harborview Hospital. The  
10 department employs 10 Meal Hosts, and each Meal Host is responsible for serving 25 to 30  
11 patients. Ms. Wearne described the negative impact of a Meal Hosts repeated unscheduled  
12 absences, including the necessity to employ "on-call" and "hourly" employees to cover the absence.  
13 When on-call and hourly staff are unavailable, the supervisor assigns the additional work to other  
14 employees. Ms. Wearne also described the loss of continuity within department and the negative  
15 impact on morale when other staff are required to step in to cover another employee's shift.  
16 Although Ms. Wearne was aware that Appellant had been in an auto accident, she was unaware that  
17 Appellant was involved in physical therapy. Appellant never provided Ms. Wearne or any other  
18 supervisory staff member with doctor notes regarding her therapy appointment. In May 2003, Ms.  
19 Wearne provided Appellant with information on the Family Medical Leave Act, and in the past  
20 Appellant requested and was granted FMLA to care for her infant daughter.

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22 2.6 On February 27, 2004, Catherine Farver, Director of Nutrition Services, recommended to  
23 the appointing authority, Johnese Spisso, that she impose a two-day suspension for Appellant's  
24 excessive absenteeism between March 2003 and February 2004. Ms. Farver testified she had no  
25 reason to suspect that Appellant's absences were not due to illness, but she recommended the two-  
26 day suspension because Appellant had a history of written and verbal counseling sessions regarding

1 her excessive and unplanned absences. Ms. Farver was further concerned because Appellant  
2 exhausted her sick leave on a monthly basis and was often placed on leave without pay for  
3 absences.

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5 2.7 On March 30, 2004, Ms. Spisso notified Appellant of her two-day suspension, charging  
6 Appellant with neglect of duty and excessive absenteeism.

### 7 8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent asserts Appellant has had an excessive amount of absenteeism and that she was  
10 counseled and put on notice that her attendance had to improve. Respondent contends that  
11 Appellant's frequent absences caused a burden on other employees and that having others cover her  
12 shift resulted in a negative impact to the patients. Respondent argues that an employer must be able  
13 to rely on its employees to report to work and that even when there are explanations for the  
14 absences, the employer can undertake discipline for excessive absenteeism. Respondent argues that  
15 Appellant was aware of and understood the FMLA process but that in this case, she made no FMLA  
16 request in relation to her auto accident. Repsondent argues that a two-day suspension was  
17 warranted.

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19 3.2 Appellant contends that as a result of an auto accident on November 3, 2003, she was forced  
20 to miss work and attend many physical therapy appointments. Appellant contends there is no  
21 evidence to support she was absent from work for invalid reasons or that the department suspected  
22 she was abusing leave. Appellant contends she was never apprised of her FMLA rights, otherwise  
23 she would have exercised those rights. Appellant argues her absences were not willful and that  
24 prior absences were due to caring for her children. Appellant asks that her suspension be reversed.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Excessive tardiness or excessive absenteeism that causes a burden or undue hardship of fellow employees or a reduction in productivity is just cause for discipline in compliance with WAC 251-11-030. Burgess v. University of Washington, PAB No. D93-151 (1994).

4.5 Respondent has met its burden of proving by a preponderance of the evidence that Appellant neglected her duty when she continued to be absent from work for an excessive amount of time despite repeated written counseling and repeated warnings from her supervisor. Respondent has also met its burden of proving that Appellant's unpredictable absences caused an undue burden on other meal hosts and had a negative impact on the workplace. Appellant's claim that she was unaware of her right to request FMLA is unsupported, especially in light of her previous utilization of family leave.

1 4.6 Although it is not appropriate to initiate discipline based on prior formal and informal  
2 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
3 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
4 D93-163 (1995).

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6 4.7 Appellant had a history of prior corrective action addressing issues all related to her  
7 attendance. Under the circumstances, Respondent has proven that Appellant's unacceptable pattern  
8 of poor attendance warrants the disciplinary sanction of a two-day suspension, and the appeal  
9 should be denied

10  
11 **V. ORDER**

12 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tanisha Anderson is denied.

13  
14 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

15  
16 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member